

California Department of Corrections

Financial Information Memo

SUBJECT:	FIM NUMBER:
GOVERNMENT BENEFIT PAYMENT CHECKS EXEMPT FROM RESTITUTION, HOLDS, LIENS, AND ATTACHMENTS	2002-03
REFERENCES:	DATE:
Department of Corrections, Legal Affairs Division, Legal Opinion No. 2002-00-0259 United States Court of Appeals, Ninth Circuit, 2001, Nelson v. Heiss	

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Office of Victims' Services and Restitution
Inmate Appeals Branch
Inmate Welfare Fund/Trust Accounting Section

PURPOSE

This Financial Information Memo (FIM) provides identification of the governmental benefit checks that are exempt from restitution, liens, attachments and holds deductions, and the procedures for processing these exempt inmate trust deposits and refunds of amounts deducted.

BACKGROUND

As a result of inmate litigation, the Ninth Circuit Court of Appeals has ruled that the Department of Corrections (CDC) is in violation of Title 38 United States Code (U.S.C.), Section 5301. The court held that CDC cannot enforce inmate trust account holds against future payments from the Veterans Administration (VA). Based on the court's decision, CDC Legal Affairs Division (LAD) staff provided an expanded legal opinion on VA benefit payments to include benefit payments from other governmental entities.

DISCUSSION

Previous to the court's decision, CDC Trust Offices have processed inmate benefit payment checks from governmental entities as any other inmate trust account deposits. As such, restitution collections and court filing fees have been deducted. In addition, these benefit payment checks have also been used to pay for amounts owed by the inmates. These inmate monetary obligations include, but are not limited to, charges for medical co-payments, artificial appliances, postage and photocopies. When the

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inmates order or receive goods and services but do not have the required funds in their inmate trust accounts to pay for them, a 'hold' for the amount due is placed on the account. This 'hold' automatically reduces from future deposits the funds available for spending by the inmates. The Trust Office staffs periodically review the holds and make the appropriate deductions from the inmate trust accounts for the amounts owed by the inmates.

The court's decision and LAD's legal opinion now requires the Trust Offices to identify these benefit payment check deposits and track the funds to ensure that restitution and court filing fees are not deducted, and that the benefit payment funds are not applied to holds on the inmate trust accounts. Accordingly, any prohibited deductions made from these benefit payment deposits will be refunded when requested by the inmates. In accordance with LAD's recommendation, refund adjustments will be made for the prior three-year period from the date of the inmate appeal. The timeframe for refund adjustments may require a coordinated effort with other institution Trust Offices.

ACTION REQUIRED

All Trust Offices need to review the attached deposit guide to assist in determining the transaction code for processing the governmental benefit payment checks and the other exempt deposits.

Effective immediately, inmate trust account deposits for VA benefits, Servicemembers' Group Life Insurance, Veterans' Group Life Insurance, Social Security Administration Benefits, including compensation paid under Title 42 U.S.C., Section 1717 for the death or injury of employees of government contractors, are exempt from restitution and holds. A new transaction code has been established to distinguish these type deposits. Please use transaction code D202, Exempt Deposit, when depositing funds from these sources. This code will not take restitution. A D299 is to be used to reverse a D202 transaction.

Furthermore, these types of deposits cannot be used to pay or cover existing holds, liens or attachments. This means that if a hold is on an inmate trust account and the inmate receives VA benefit payment checks, the hold cannot be deducted from the VA benefit payment deposits. The use of transaction code D202 identifies funds deposited that are exempt from levies/attachments/holds. If the funds deposited are received from other sources such as payroll, or family, these funds may be used to cover the hold. If funds from the exempt deposit are already on the inmate's trust account, and you receive an inmate authorized charge, you may deduct the charge from the trust account balance. In order to properly identify and track the funds from these exempt deposits, all Trust Offices are instructed to use the First In – First Out (FIFO) methodology: The funds deposited first, are used first.

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The LAD staff has also stated that retirement payment checks received from the Federal government, Public Employees Retirement System (PERS) or retirement payment checks from other public agencies should not be used to pay a trust account hold. However, for cost-benefit purposes, operational effectiveness, and with the Office of Victims' Services and Restitution agreement, Trust Offices will exempt all of these type deposits from restitution as well as hold collections, pending the implementation of a new trust accounting system. These types of check deposits will be processed the same as the above noted deposits, using a D202 transaction code to record these type deposits. Check payments from private retirement plans are not exempt from restitution and holds.

Checks that are received from the Retired Serviceman's Family Protection Plan, Survivor Benefit Plan, federal civil service retirement, Railroad Retirement Board, Bureau of Indian Affairs, an Indian tribe, a financial institution disbursing from a tribal account, compensation under the Longshore and Harbor Workers Compensation Act, or any unusual federal source are to be referred to LAD staff for review.

In order to comply with the court's decision, when an inmate that receives governmental benefit payment checks transfers to another institution, the receiving Trust Office needs to be notified that the inmate's balance on the transfer report includes exempt deposit funds. The sending Trust Office needs to print and send the inmate's account statement with the transfer report to identify the exempt deposits on the account statement to the receiving Trust Office. The receiving Trust Office needs to use the same deposit code for the amount or balance of the exempt deposit funds. For example, if the trust account balance is \$200.00 and the code D202 was used for \$150.00, the receiving Trust Office should enter the trust account balance using a D320 for \$50.00 and a D202 for the remaining \$150.00 balance. In the event that an inmate has been receiving exempt funds but has a zero balance when transferred, please inform the receiving Trust Office to alert them to expect exempt deposits. In order to ensure that the transfers are checked for exempt deposits and to facilitate the process, it is recommended that a list be maintained of inmates receiving governmental exempt payment checks.

When an inmate submits an appeal to grieve the erroneous deductions from his exempt check deposits, a refund adjustment, for the timeframe requested by the inmate, will be made to the inmate's trust account. The LAD staff has recommended that the timeframe for the refund adjustments do not exceed the prior three-year period from the date of the inmate appeal. For the three-year period the exempt deposits will have to be verified, as well as the amount(s) of the charges taken from the exempt deposit funds. This may require a coordinated effort with other institution Trust Offices. In the event that verification can not be made, the inmate will need to provide proof of the exempt receipts. After the exempt deposits and the charges taken have been documented, trust staff are to call Gina Hartin, Restitution Coordinator, at (916) 358-2047, or Judy Parker, Supervisor, Inmate Trust Control Accounting Unit, at (916) 358-2171, for assistance with processing the adjustments.

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If you have further questions regarding this FIM, please contact Richard Flores, Chief, Inmate Welfare Fund/Trust Accounting Section, at (916) 358-2211.

WENDY STILL
Deputy Director
Financial Services Division

Attachment

cc: Chuck M. Sickels, Legal Affairs Division
Kim Garcia, Accounting Management Branch
Richard Flores, Inmate Welfare Fund/Trust Accounting Section
Gina Hartin, Inmate Welfare Fund/Trust Accounting Systems
Accounting Policies and Procedures Section